IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6214 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EQUITY BEARINGS PVT. LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 6214 of 2004
MR MK VAKHARIA for Petitioner No. 1-2
MR JITENDRA MALKAN for Respondent No. 1-3-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 21/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. Petitioner No.1 is a Small Scale Industry unit and petitioner No.2 is its Director. On 7.9.1997 Central Excise Officers visited the factory premises of the petitioner No.1 company and noticed some lapses on the part of the petitioners in not following the procedural requirements of maintaining private records with respect to stock of goods manufactured by the petitioners. Though the petitioners offered valid explanation, but their explanations was not accepted and the stock of goods worth Rs.5,06,104/= of the petitioners were seized / confiscated. Thereafter, show cause notice dated 4.7.1998 (Annexure-A) was issued to the petitioners calling upon them to show cause as to why the seized goods of Rs.5,06,104/= should not be confiscated and penalty under Rule 173Q(1) of the Central Excise Rules, 1944 (for short "the Rules") should not be imposed upon the company and its director No.2. Same was replied by the petitioner on 21.7.1998 (Annexure-B) contending that it was purely a procedural mistake, therefore, notice be discharged. However, the Assistant Commissioner, Central Excise, Division-I, Rajkot-Respondent No.3 passed order dated 21.9.1998 (Annexure-C) confiscating 3810 nos. of bearings and gave the option to pay Rs.1,50,000/= as redemption fine. He had also imposed penalty of Rs.3,00,000/= on the petitioner company under Rule 173Q(1) of the Rules and penalty of Rs,2,00,000/= on the petitioner No.2 under Rule 209A of the Rules. Against which both the petitioners filed separate appeals and stay applications before the Commissioner of Central Excise (Appeals), which came to be allowed by Commissioner (Appeals) dated 26.10.1999 (Annexure-D). Against which the Commissioner of Central Excise, Rajkot filed application before the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai (for short "CEGAT"), which was allowed on 7.6.2000 by the CEGAT. Rectification application dated 6.7.2000 (Annexure-F) was rejected by the CEGAT on 26.7.2002 (Annexure-G). Hence, this petition.

From the impugned order dated 7.6.2000 (Annexure-E) passed by the CEGAT it appears that the CEGAT allowed the appeals of the Department in absence of the petitioners at the time of hearing of stay applications against the present petitioners. On this ground alone this petition is required to be allowed.

In view of the above, this petition is allowed and the impugned order at Annexure-E passed by the CEGAT

is hereby quashed and set aside and the matter is remanded to the CEGAT to decide the appeals afresh after extending an opportunity of hearing to the petitioners. Once, the impugned order at Annexure-E is quashed and set aside, then the subsequent order passed by the CEGAT (Annexure-G) rejecting rectification application of the present petitioner has to be quashed and set aside and accordingly it is quashed and set aside. Rule is made absolute with no order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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